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Mary Connaughton

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## SOME SPECIAL WORDS FOR ROBERT BURDICK

MARY CONNAUGHTON\*

Many words can be used to describe Bob Burdick, my supervisor, colleague, and friend at the Boston University Civil Litigation Program since the fall of 1993. BU has recognized him as a “Quiet Legal Giant”;<sup>1</sup> as his colleagues, we have commented on his compassion, low-key humility, creativity and innovation, strength as a mentor, and expertise in negotiation. We share common images and experiences as well: the open door to his office and the light already burning at 6:30 on dark mornings as we arrived early to go to court. His insight and understanding after a disturbing experience with an opposing attorney. His visits to clients in apartments that fell well below the State Sanitary Code. We share memories of regular comments: “It’s a negotiation,” when negotiation might be the last thing we could see in a situation. Or we hear from the student who pondered a point Bob made about the lawyer’s role—for example, a recent student described learning that part of a lawyer’s duty is to respect clients’ rights to decide, even when the student disagrees with the client’s choices.

### RESPECT FOR THE DECISION-MAKING RIGHTS OF INDIGENT AND INCOMPETENT CLIENTS

Early in law school, Bob found his way to Greater Boston Legal Services (“GBLS”) and to his life’s work with indigent clients, people in poverty who faced eviction, divorce, unemployment, and disabilities. He stayed with GBLS and began his clinical practice with these clients and students at BU. In the midseventies, Bob and clinic students joined Richard Cole to work on the landmark case *Rogers v. Commissioner of the Department of Mental Health*.<sup>2</sup> I first learned about the case during the spring of 1975 when, fresh from college, I worked with children in a state mental hospital. The case involved the rights of mentally ill people to refuse antipsychotic treatment. This was a new idea that challenged assumptions about people committed to mental hospitals; how could patients committed to a hospital have the right to refuse antipsychotic treatment? But the case would reveal longstanding problems for state hospital patients who were involuntarily medicated and harmed by the side effects of some medication but who lacked constitutional protections against such involuntary medication. The case led to “*Rogers* hearings,” the judicial procedures adopted and used

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<sup>1</sup> Lauren Eckenroth, *A Quiet Legal Giant: LAW’s Robert Burdick*, BOSTONIA (Nov. 19, 2020).

<sup>2</sup> 458 N.E.2d 308 (Mass. 1983).

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today to ensure constitutional protections for such rights of the mentally ill.<sup>3</sup> This landmark victory and the cases that followed opened the door to freedoms for people who had been silenced by commitment for mental illness.

#### NEGOTIATION

At least fifteen years after *Rogers* was decided, I worked as an assistant attorney general at the Government Bureau of the Massachusetts Attorney General's Office. I encountered a few of Bob's former students in practice. They had graduated, gotten work at GBLS, and now challenged various policies of government agencies. As I defended one of these agencies, I was surprised by the negotiation methods these lawyers used. Rather than resort to a one-sided argument about who was right on the law, these lawyers asked practical questions: Why did the agency follow a particular procedure? How did that help with the agency's goals? How did the practice square with existing law? The cooperative and thoughtful approach and their effort to understand my client's position was surprising.

A couple of years later, I would attend Bob's first class on negotiation, his "Hour of Power," in which he laid out his negotiation model. This model, captured in his paper, "The Tricks of the Trade," gave students a practical approach to building relationships with adversaries and cooperatively learning as much as possible about both side's cases in order to get to a negotiated resolution. Bob saw the negotiating attorney in the adversary system as a cooperative problem solver, someone who worked to understand the interests, goals, and concerns of both parties in order to find solutions to conflicts.

He would often draw analogies to negotiation reframing various human interactions as negotiations. I did not always see the similarities. But even now, his insights continue to surprise me. At the core of his model is a recognition that lawyers in the adversarial system do not have one-sided control in most situations; in negotiation like life, no one has the power to control the choices of another human being.

#### TEACHER

This brings me back to the student's recent lesson learned from Bob Burdick about the lawyer's role: that part of our job is to respect the client's rights to make their own decisions, even when we do not agree with their choices. Here, as with the patient decision-making at issue in the *Rogers* case or the lawyer's effort to resolve a dispute through negotiation, Bob's humility and empathy for others served as foundational principles. Throughout his work on behalf of people silenced by systemic disadvantage; in his cooperative and problem-solving model for negotiation in the adversarial system; and in the learning endeavor with students, attorneys, and colleagues at the clinic, Bob demonstrated significant empathy, an unwavering humility, and a profound

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<sup>3</sup> See *id.* at 512-13.

respect for the rights and freedoms of others. In addition to “Quiet Legal Giant,” these are the words I would choose for Bob.

I am grateful for his teaching.